

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

On July 18, 2007, four adult male gypsy moths were taken from a trap in the Ojai area of Ventura County. The finding of four mature male gypsy moths was indicative of a possible incipient infestation of the moth in the Ojai area of Ventura County. As a result the Department implemented an emergency amendment to its Gypsy Moth Eradication Area regulation, Section 3591.6, which was effective on July 24, 2007.

The Department has continued to deploy delimitation traps and began a fall survey for gypsy moth egg masses in the vicinity of where adult moths were trapped. On October 9, 2008, multiple gypsy moth egg masses (Pest and Damage Record #s 1422481 and 1422482) were found on the trunk and branches of two oak trees. Additionally, spent pupal cases were also found indicating the source of where the adult gypsy moths had been emerging (refer to pictures). There is clear evidence that a reproducing population of gypsy moth exists in the Ojai area of Ventura County. As a result, it is now necessary to implement a quarantine to prevent the artificial movement of gypsy moth from this area.

The European gypsy moth female adult cannot fly and after it is mated, it crawls over items laying its egg masses. These egg masses may be moved on outdoor household items such as dog houses, barbeques, yard equipment, potted plants, etc. Additionally, the egg masses have been found attached to and moving on vehicles, trailers and boats which have sat for a period of time in storage in an outdoor area. Egg masses may also move on nursery stock.

While this regulation has been developed and proposed, the Department implemented its statutory authority contained in California Food and Agricultural Code (FAC) Section 5701 to prevent the artificial spread of this pest from this area while it still conducts its visual survey activities for egg masses. FAC Section 5701(a) states, "If any pest exists on any premises, the director or the commissioner may hold any plant or other host or possible carrier which is, or may be, capable of disseminating or carrying the pest. The director or the commissioner also may hold the plants, other hosts, or other possible carriers on any premises within five miles of the premises on which the pest was found to exist. The director or commissioner shall notify the owner of the plant or other host or possible carrier, or his or her agent, of this action, and the issuance of any shipping permit or nursery stock certificate with respect to the plant or other host or possible carrier shall be refused and any such permit or certificate which has been previously issued shall be revoked.

(b) The distance from the premises at which a pest is found that the director or commissioner may hold plants, other hosts, or other possible carriers shall be the maximum distance that the director or commissioner determines the pest is likely to travel, but not to exceed five miles."

The Department now believes it has enough survey data to establish the quarantine boundary which includes a one mile buffer area surrounding the epicenter of the infestation.

The proposed quarantine boundary was developed in cooperation with the Agricultural Commissioner of Ventura County and the United States Department of Agriculture.

Gypsy moth, *Lymantria dispar*, is a serious pest of fruit, forest, and shade trees. In the eastern United States the pest has, by repeated defoliation, killed many trees. If left

uncontrolled it can destroy native forest and wooded areas and, in orchard and urban areas, pesticide use may be necessary to eradicate the insect and prevent damage to crops and ornamental and native trees. A defoliated watershed increases both fire and erosion potential.

Gypsy moth is a pest of national concern. The United States Department of Agriculture also maintains a Federal Domestic Quarantine Notice against gypsy moth (Section 301.45, Title 7, Code of Federal Regulations) to prevent the artificial spread of this pest to uninfested areas.

The gypsy moth goes through four stages of development: egg, larva, pupa, and moth. It usually has one generation per year, overwintering in egg masses attached to trees, stones, walls, logs, and other outdoor objects such as outdoor furniture, automobiles, and trailers. The female moths lay their eggs in the summer, in egg masses which may contain up to 1,000 eggs. In California, the eggs usually hatch in February or March, but may hatch earlier. The larvae are the destructive stage and feed until pupating in early summer. The moths emerge from the pupal or cocoon stage in 10 to 14 days as adult moths. The pests do not feed in the moth stage, but only mate and lay eggs. Hosts of the gypsy moth include oak, apple, willow, cherry, and maple.

If the moth were allowed to spread and become established in urban, agricultural or native forests, California's forestry and nursery industries would suffer losses due to decreased production of marketable crops, host trees, and shrubs; increased pesticide use; and loss of markets if other states or countries enacted quarantines against California products. Severe damage to native plantings and forests would also occur.

The gypsy moth has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and

therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, sections 15307 and 15308.

This amendment will provide authority for the State to perform quarantine activities against gypsy moth in the Ojai area of Ventura County. Gypsy moth egg masses have been laid in this area and it is necessary to immediately prevent their artificial movement from the infested area. Therefore, it is necessary to amend Section 3591.6(a) on an emergency basis.

Authority and Reference Citations

Authority: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

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Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

Section 3408. Gypsy Moth Interior Quarantine.

The proposed amendment of Section 3408) will establish an approximate five square mile regulated area surrounding the Ojai area of Ventura County. The effect of this amendment of the regulation is to establish authority for the State to perform quarantine activities against gypsy moth in this area.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3408 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Ventura County Agricultural Commissioner requested that these changes to the regulation be made.

Cost Estimate

The Department has also determined that the regulation will involve no additional costs or savings to any state agency because initial funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.